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No. 11

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999
Industrial Relations (Tribunals) Rules 2000

NOTICE

The following Agreements have been certified by the Commission:-

No/s	Title	Date certified	Cancelling
CA486/01	Bundaberg Sugar Ltd (Northern Region) Sugar Industry Field Sector - Certified Agreement 2001	29/10/01	CA349/99
CA489/01	R & KE Fulcher Pty Ltd - Certified Agreement	29/10/01	
CA475/01	Subway Corinda - Certified Agreement 2001	30/10/01	
CA488/01	Sunwater Enterprise Agreement - Certified Agreement 2001-2003	31/10/01	IA81/96
CA501/01	University of Queensland Union Schonell Complex/ Retail – Certified Agreement	2/11/01	

The following Agreement is terminated:-

	Date terminated
CA619/99 Inghams Enterprises (Murrarie Maintenance) – Certified Agreement 1999	24/10/01

E. EWALD
Industrial Registrar

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 329(b)(v) – leave to be heard

The Electrical Trades Union of Employees of Australia, Queensland Branch (No. CA357 of 2001)

NORTHPOWER (QUEENSLAND PROJECTS) ENTERPRISE AGREEMENT 2001- 2004 CERTIFIED AGREEMENT

PRESIDENT HALL
COMMISSIONERS FISHER AND ASBURY

6 November 2001

Application for certification of agreement – Reference to Full Bench – Intervention by State peak council – Leave to be heard – Likelihood that Full Bench decision will affect members of organisations seeking leave to be heard – Application for intervention by State peak council rejected – Leave to be heard granted pursuant to s. 329(b)(v).

DECISION

An application for the approval of the *Northpower (Queensland Projects) Enterprise Agreement 2001-2004 – Certified Agreement* has been referred by a single member of the Commission to a Full Bench. The issues to be dealt with by the Full Bench centre on clause 47 of the proposed Agreement, which provides for the payment of a representation service fee to The Electrical Trades Union of Employees of Australia, Queensland Branch, (ETU), by employees to be covered by the Agreement.

Leave to be heard in the proceedings was sought by the Australian Sugar Milling Association, Queensland, Union of Employers, (ASMA) under s. 329(b)(v) of the *Industrial Relations Act 1999* (the Act). The Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers, (QCCI) sought leave to intervene pursuant to s. 322(2) of the Act, and if such leave was refused, an alternative application was made under s. 329(b)(v).

The applications were opposed by ETU. At a hearing on 10 October 2001, leave to be heard under s. 329(b)(v) of the Act was granted to ASMA and QCCI. We now provide reasons for that decision.

Submissions for the ASMA

Section 329(b)(v) provides that except as otherwise prescribed by the Act or the Rules, the Commission may direct for proceedings, who may be heard and on what conditions. Mr Murdoch for ASMA argued that his client, through its members, is involved with some 20 certified agreements in the State jurisdiction. None of those Agreements contain provisions of the type sought to be included in the proposed Agreement.

It was further contended, that over recent times ASMA on behalf of members, had resisted the inclusion of similar provisions in Agreements, and that if such provisions are certified by the Commission, future resistance may be more difficult. ASMA sought to raise a number of issues and legal arguments about the proposed provisions, which go directly to important public interests. If ASMA was not heard, the Commission would not have the assistance that it should have in relation to those matters, given the interests of the parties to the Agreement in achieving certification.

Mr Murdoch also argued that s. 155 of the Act posed no impediment to his clients being given a right to be heard, as the section does not affect another right of an employee organisation or any one else, to be heard on or intervene in such an application (refer s. 155(3)).

Submissions for the QCCI

Mr Smith argued for QCCI to be given the right to intervene in the proceedings as a State peak council, pursuant to s. 322(2). It was submitted that QCCI currently has a number of members undertaking negotiations for certified agreements, where "bargaining agent fee" clauses are a contentious issue. A decision of the Full Bench in this matter would directly affect those negotiations.

Mr Smith also submitted that the requirement under s. 322(2) for intervention rights to be granted was that members of the State peak council seeking those rights have sufficient interest in the matter. This requirement was not as stringent as the test which has been applied in cases where it has been held that provisions of the *Workplace Relations Act 1996* (Cth) require a party seeking intervention rights to demonstrate a substantial interest in proceedings.

In the alternative, Mr Smith argued that QCCI should be given a right to be heard, under s. 329(b)(v) on the same basis as the argument advanced for ASMA.

Submissions for the ETU

In opposing the applications, Ms Inglis for ETU submitted that s. 155(3) of the Act does not give anyone a right to be heard or to intervene. Rather the subsection ensures that a right derived from another section of the Act is not negated by s. 155. Ms Inglis argued that QCCI had brought no evidence to show that any of its members had a sufficient interest in the proceedings to enable it to intervene in the proceedings pursuant to s. 322(2).

It was then argued that s. 329(b)(v) vests in the Commission a discretionary power to determine who may be heard in proceedings, and does not establish a right to be heard which is capable of being protected by s. 155(3). Further, s. 329(b)(v) is general in nature, and must yield to the specific provisions of s. 155.

In the alternative, Ms Inglis argued that if the Commission was of the view that s. 329(b)(v) can establish a right to be heard for the purposes of s. 155(3), that the nature of the application and the objects of the Act should also be considered.

The application was for the certification of an agreement between ETU and Northpower, and was binding on those parties and the employees of Northpower. Those wishing to be heard in relation to the certification do not have interests that will be adversely affected by the decision to be made by the Commission: see *Allesch v Maunz* [2000] HCA 40 (3 August 2000) per Kirby J at para 35.

Ms Inglis argued that it was contrary to the public interest and to the interests of the parties to the Agreement, to allow organisations not party to that Agreement to be heard in relation to its certification. The delay and uncertainty associated with organisations not party to an Agreement seeking to be heard in relation to its certification, is also contrary to the objects of the Act, in particular those contained in ss. 3(e), 3(g) and 3(i), which respectively refer to the promotion of effective and efficient operation of enterprises and industries; participation of employers and employees in industrial relations and the regulation of employment by Awards and Agreements.

Conclusions

In our view, a State peak council for the purposes of s. 322(2) is an organisation acting in a peak role, on behalf of other organisations. QCCI has not submitted that for the purposes of this matter, it is acting in such a capacity. Accordingly, the application for intervention rights under s. 322(2) is denied. We do not need to decide if QCCI is a State peak council as defined at Schedule 5.

We accept the argument of Mr Murdoch that there is no impediment in s. 155 to the grant of the applications for leave to be heard. Section 329(b)(v) gives the Commission discretion to grant those applications. We are of the view, that once leave to be heard is granted under s. 329(b)(v), it is a right for the purposes of s. 155(3).

The *Northpower (Queensland Projects) Enterprise Agreement 2001-2004 Certified Agreement* has been referred to a Full Bench of the Commission pursuant to s. 281 of the Act. That reference has occurred because a member of the Commission sitting alone has concerns about clause 47 of the Agreement. It is not open to a member of the Commission to refer only part of an agreement to a Full Bench: see *Printing Trade – The Gympie Times Pty Limited Certified Agreement (CA 567 and 568 of 1998)* (1999) 160 QGIG 323.

Inevitably, a decision of the Full Bench about the provisions of the Agreement, particularly clause 47 will set a precedent. That precedent will directly affect the interests of those represented by the organisations seeking leave to be heard. We are also of the view that the submissions of those seeking leave to be heard will assist the Commission. Accordingly, the applications by ASMA and QCCI to be heard in relation to this matter, are granted under s. 329(b)(v).

We note that the *Skills Training Mackay – Certified Agreement 2001 (CA 323 of 2001)*, which also contains a provision dealing with a bargaining agents fee, has been referred to a Full Bench, constituted by the same members dealing with the *Northpower (Queensland Projects) Enterprise Agreement 2001-2004 Certified Agreement*. In the former matter no objection has been raised with respect to applications by ASMA and QCCI for leave to be heard and such leave has been granted under s. 329(b)(v).

We have made no assumption that the matters should be joined. Both matters have been listed for hearing of all issues associated with the clauses in question on 20 November 2001. On that date, we will determine the preliminary point of whether the matters will be heard together or sequentially. The substantive issues to be dealt with on that date include those raised by the members of the Commission who have referred the applications and also matters raised by the parties who have been granted leave to be heard. We note that at a preliminary hearing in relation to both applications, the parties agreed that directions in relation to the exchange of outlines and arguments would not be required, as the parties could agree such matters between themselves.

D.R. HALL, President.

G.K. FISHER, Commissioner.

I.C. ASBURY, Commissioner.

Released: 6 November 2001

Appearances:-

Ms K. Inglis of The Electrical Trades Union of Employees of Australia, Queensland Branch.

Ms T. Lane of The Australian Workers' Union of Employees, Queensland.

Mr J. Murdoch, Senior Counsel on behalf of the Australian Sugar Milling Association, Queensland, Union of Employers.

Mr M. Smith of the Queensland Chamber of Commerce and Industry Limited Industrial Organisation of Employers.

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 278 – order for unpaid wages

Michael Ernest Hennessy AND Christine Halsall t/a Hook-in Team (No. W165 of 2001)

COMMISSIONER BLADES

2 November 2001

Unpaid wages – Section 278 *Industrial Relations Act 1999* – Onus of proof of claim – Allegation wages paid – Time and Wages Records not kept – Onus of proof of payment on employer – Issues of fact – Application granted.

DECISION

This is an application pursuant to s. 278 of the *Industrial Relations Act 1999* (the Act) for an order for the payment of unpaid wages by the respondent alleged to be due on behalf of Leah Fay Noble. The applicant is an Inspector of the Department of Industrial Relations, Townsville.

The amount sought by the Inspector totals \$3,933.97 alleged to be due from the employment of Ms Noble in the Contract Cleaning business of the respondent for work performed during the period 1 September 2000 to 2 October 2000 as a casual employee. There was no claim for an outstanding superannuation contribution.

Remarkably, the employee Ms Noble claimed that in that period of time, she was paid only one cash payment of \$90 whereas the employer respondent claims that the employee was paid \$1,227.62 gross.

The standard of proof is upon the balance of probabilities. The onus of proof is upon the applicant to prove that the wages are due and unpaid. However, at least part of the sum alleged to be due is claimed to have been paid by the employer. An allegation that a debt has been discharged is to be proved by the person making that allegation – *Acton v Queensland Metal Co Pty Ltd* 1956 Q.W.N. 35 and consequently, the onus rests upon the employer to prove that the wages were paid.

The employee alleges that the employer did not have a time sheet on which she could record starting and finishing times, the employer did not give her a pay slip and that she did not sign for any wages. Ms Noble alleges she kept her own record of time of starting and ceasing work on each day. The Inspector prepared the claim based upon the information provided to him by Ms Noble.

On the other hand, Ms Halsall claims she kept time and wages records and alleges that much of the hours claimed by the employee were from the time that Ms Halsall picked her up until the time she dropped her off at home. She claimed she had a witness to the payment of wages which were paid “across the road from the hospital in her car”.

The time and wages record kept by Ms Halsall did not comply with the provisions of s. 366 of the Act and there was an admitted breach of s. 370 relating to the provision of a pay advice.

This is the type of case mentioned by Sheldon J in *Ray v Radano* (1967) (67) NSWAR 471 where his Honour said that an employer who neglects to keep the statutory records, which, in their probative effect, are as much a protection to himself as to the employee, deserves little sympathy if he loses in a battle reduced to oath against oath. It would have been a simple matter to have obtained the employee's signature acknowledging the receipt of the wages.

The employee's claim that she kept her own diary of events and hours worked can be readily understood in the light of her evidence that she was paid one payment of \$90 cash on the first day and on the next Friday, when payment of wages was again due, none was made. She then acted upon her mother's advice to keep records. While she continued to work for Ms Halsall, she said she had numerous fights with her over non-payment.

Ms Noble was working as a cleaner and the wages claimed over three of the relevant weeks amounted to \$1,003.31, \$952.72 and \$1,659.63. These amounts appear somewhat high until the hours claimed to have been worked are considered. In those weeks, she claims she worked 55.75 hours, 51.74 hours and 75.66 hours respectively. On one day alone she claimed to have been on various jobs from 7.00am until 12.15am the next day.

On the other hand Ms Halsall’s credibility suffered greatly. She claimed on oath to have sent witness statements to the Queensland Industrial Relations Commission and to the Industrial Inspector at Townsville as required by the Directions Order. None were received. She claimed in evidence that she had a copy of her statement at home, later that she did not. She claimed that all payments to Ms Noble were in cash, delivered by folding the money (often in the car) and handing it over. All of the payments she alleges were made varied in amount and contained coinage and had to be the subject of calculation because of taxation deductions she alleges were made – an improbable feat in a car and without access to monetary change.

Ms Halsall produced some daily work sheets for the periods ending 25/8/00, 8/9/00, 15/9/00 and 22/9/00. She claims she had completed these documents in her own handwriting. An inspection of those documents reveals that was not the case.

The time and wages records produced record amounts for employer superannuation contributions. In his interview with Ms Halsall, the Inspector sought proof of payment of those amounts. Ms Halsall told him that she did not have to pay superannuation and that the amounts recorded were so she could just calculate so she knew where she was with super. The amount she alleges that she paid to Ms Noble would appear to me to attract an employer superannuation contribution.

Ms Halsall claimed that payments were never made in an envelope. A Mr Boyd, called by Ms Halsall to verify the payments at first told the Commission that the payments were in a yellow pay slip envelope. Ms Jodi Smith also called to verify the payments was at first unable to corroborate any payments to Ms Noble but then was able to say she saw a number of payments, either in cash or in an envelope, all being effected in a house.

On 1 February 2001, the Industrial Inspector received from Ms Halsall a copy of the time and wages book she alleged she kept. That document showed various deductions for income tax. The Inspector sought proof of payment to the Tax Office when he contacted Ms Halsall on 8 February 2001. No proof of payment has ever been produced to him and none was produced to the Commission at the hearing.

On the whole of the evidence, I accept on the balance of probabilities the applicant’s evidence and I reject the evidence of Ms Halsall. I am satisfied that the applicant’s notes of the times she worked were accurate and that she was only paid the one payment of \$90 in cash.

The Industrial Inspector has completed a schedule of hours worked and amounts due from the notes supplied by Ms Noble. The accuracy of the mathematical calculations has not been challenged and there is no reason to bring them into question. The schedule contains some travelling time payments. While Ms Halsall maintained that she had a verbal agreement with Ms Noble that Ms Noble would not be paid travelling time, the *Cleaning Services (Contractors) Award - State* in clause 3.6 provides:–

“(1) Where any employee is required to work at more than one location during their working day or shift, the time occupied in travelling between locations, shall be counted as ordinary time worked. . . .”

Where there is an inconsistency between the provisions of an Award and a contract of service, the Award prevails – s.135 of the Act. Whatever agreement was made with Ms Noble was irrelevant.

I am satisfied that the amount of \$3,933.97 is payable and unpaid to Ms Noble by Ms Halsall. I order that the amount be paid by Ms Halsall on the following terms and conditions:–

- That the amount be paid to Ms Noble at the rate of \$1,000 per month with the first payment to be made within 30 days after the date of release of this decision, subsequent payments to be made at 30 day intervals.
- That if Ms Halsall is able to produce proof satisfactory to the Industrial Inspector Townsville that a sum of money has been paid to the Australian Taxation Office on behalf of Ms Noble, credit is to be given for the payment.
- That upon default being made in the payment of any one instalment, the full balance will become due and payable immediately.

I order accordingly.

B.J. BLADES, Commissioner.

Released: 2 November 2001

Appearances:–

Mr M.E. Hennessy, Department of Industrial Relations, for Ms L.F. Noble.

Ms C. Halsall, for the respondent.

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INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(1) – appeal against decision of industrial commission

Gold Coast District Health Service AND Robert Walker (No. C72 of 2001)

PRESIDENT HALL

2 November 2001

DECISION

Robert Walker was dismissed from his position as a wardsperson at the Gold Coast Hospital on 28 June 2000. Shortly thereafter an application for reinstatement was filed under the *Industrial Relations Act 1999*. In consequence of a conference conducted by the Queensland Industrial Relations Commission, as required by s. 75, Mr Walker was reinstated. He was immediately suspended on full pay. An investigation then commenced into the events which had led to his dismissal. Mr D Bergin, then District Manager Gold Coast Health Service District received a copy of the investigation report on about 18 October 2000. Mr Bergin considered the terms of the report. Subsequently, on 18 December 2000, Mr Walker was again dismissed. He was dismissed because Mr Bergin was satisfied on the balance of probabilities that Mr Walker had engaged in the following misconduct:–

- “On 16 June 2000 you were observed by two (2) fellow members of staff verbally and physically assaulting a patient in the Urology ward. The assault is alleged to have included you repeatedly telling the patient to “shut-up” and improperly and aggressively moving a patient by pulling them by their wrists, and thereby putting the patient’s welfare at risk.
- On 28 June 2000 you were observed by two (2) fellow staff members assaulting a patient in ward 7B. The detail of the assault is that you struck a patient with your open hand to their wrist/forearm.”

In light of those findings of fact Mr Bergin concluded that Mr Walker had breached s. 87(1) of the *Public Service Act 1996* in that he had (a) been guilty of misconduct and (b) had contravened, without reasonable excuse, a provision of the Queensland Health Code of Conduct relating to respect of persons.

Once again, there was an application for reinstatement. On this occasion, the conference convened pursuant to s. 75 was not fruitful. The matter went to a hearing. Mr Walker was successful. By a decision published 15 October 2001 the Commission ordered the Gold Coast District Health Service to reinstate Mr Walker to the position of portage officer within one week of the release of the decision and further ordered the Gold Coast District Health Service to reimburse Mr Walker for any net loss of income incurred from the date of termination to the date of reinstatement. This is an appeal against the decision of the Commission. (By consent, the order was stayed on the papers pending the outcome of this appeal.) It is Convenient to commence with the second ground of appeal, *viz* –

“ The Commission erred in law in applying an onus of proof which fell upon the appellant to establish, to the reasonable satisfaction of the Commission, that the respondent was guilty of the misconduct alleged.”.

It is helpful to an understanding of the Commission’s decision to reproduce s. 87 of the *Public Service Act 1996*. Section 87 provides:

“Grounds for discipline

87.(1) The employing authority may discipline an officer if the authority is reasonably satisfied that the officer has –

- (a) been guilty of misconduct; or
- (b) contravened, without reasonable excuse, a provision of this act or a code of conduct.

(2) In this section –

“code of conduct” means a code of conduct –

- (a) approved under the *Public Sector Ethics Act 1994*; or
- (b) prescribed under a directive of the commissioner.

“misconduct” means –

- (a) disgraceful or improper conduct in a official capacity; or
- (b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the public service.

Example of misconduct –

Victimising another public service employee in the course of the employee’s employment in the public service.” (emphasis added)

It is against that background that one must read the Commission’s observation that –

“On both occasions the terminations were instant and were based on a finding, in the second termination after the investigation, that, on the balance of probabilities, a verbal and physical assault occurred.

The onus of proof falls upon the respondent to establish, to the reasonable satisfaction of the Commission that the employee was guilty of the misconduct alleged. The standard proof, the civil standard, must be such as to enable a positive finding that the misconduct occurred. The requisite degree of satisfaction must have regard to the seriousness of the alleged conduct and the gravity of consequences of the finding. (*Wang v Crestele Industries Pty Ltd* (1977) 73 IR 454; *Gilmores* Case No IRL 38907 of 1998 unreported) and *Briginshaw and Briginshaw*.”.

The Commission did not in any way fail to understand that pursuant to s. 78(1) the (now) respondent carried the ultimate onus. The Commission’s remarks were directed at the onus pursuant to s. 87(1) of the *Public Service Act 1996*. Mr Bergin was entitled to act against Mr Walker pursuant to s. 87(1) only if “reasonably satisfied” that one or other of the grounds at paragraph (a) and paragraph (b) of the subsection had been made out. It is appropriate to interpolate that a perusal of the exhibits indicates that at all times the investigating committee and Mr Bergin had proceeded on the view and had informed Mr Walker, that the investigation was being carried on and any determination would be made on the basis that Mr Bergin had to be satisfied on the balance of probabilities that one or other of the grounds at paragraph (a) and paragraph (b) of the subsection have been affirmatively made out on the balance of probabilities. Everything that the Commission has said upon this matter was entirely correct. A conclusion that Mr Bergin could not have been “reasonably satisfied” within the meaning on s. 87(1) was not of course determinative of whether Mr Walker was entitled to a remedy pursuant to s. 78 of the *Industrial Relations Act 1999*. However, once it was determined that the dismissal was not authorised by the *Public Service Act 1996* and was not compatible with the understanding between the appellant and the respondent about the circumstances in which the respondent was liable to dismissal, it was but a short step to conclude that the dismissal was “unjust”: compare *Byrne v Australian Airlines Limited* 1995 185 CLR 410 at 465 per McHugh and Gummow JJ “ . . . [T]ermination of employment may be unjust because the employee was not guilty of the misconduct on which the employer acted . . . ”.

The Commission held that the “onus” had not been satisfied because the Commission did not accept the evidence of the appellant’s witnesses. That takes me to the appellant’s first ground of appeal. The complaint is that the Commission erred in rejecting the evidence of the appellant’s witnesses. (In truth, it was not a matter of a ground of appeal and a complaint. The Commission’s conclusion that the evidence of the appellant’s witnesses should not be accepted was attacked on numerous grounds and subject to many complaints.)

The fact of the matter is that after completion of cross-examination, the appellant’s case was in disarray. Witnesses had contradicted one another. Some witnesses had contradicted themselves. The Commissioner, who had the advantage of hearing and observing the witnesses, concluded that their difficulties in accurately recollecting what had occurred flowed from the delay in the conduct of the investigation. At various points, the Commissioner said :

“The recollection of those involved in the incidents and the capacities of those called upon to investigate have been tainted by the tyranny of time. The investigation began some three months after the events initially relied upon and the hearing where witnesses were examined commenced some nine months after the second termination some fifteen months after the initial termination.”.

“The delay in the investigation can be fairly laid at the feet of the respondent.”.

“The investigation commenced in September 2000, some three to four months after the allegations of 29 May and the instance of 16 and 28 June 2000.”.

“I regard the conflict between the respondent’s witnesses as being such as to make their recollection of the events questionable.”.

In *Warren v Coombes* 142 CLR 531 at 537 Gibbs ACJ, Jacobs and Murphy JJ adopted the observations of Lord Sumner in *S.S. Hontestroom v S.S. Sagaporack* [1927] AC 37 at 47:

“ . . . Not to have seen the witnesses puts appellate judges in a permanent position of disadvantage against the trial judge, and unless it can be shown that he has failed to use or has palpably misused his advantage, the higher court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case.”.

There is nothing to take this case outside the general rule. It is true that (brief) statements were taken (substantially) contemporaneously with the incidents and that (substantially) those who gave those statements adhered to the terms of the original statement. However, it is also clear from the investigative report and the attachments thereto that at least in some (and perhaps all) cases witnesses’ memories were refreshed by reference to the contemporaneous statement before a further statement was taken. I am not prepared to go behind the Commissioner’s finding.

It was then contended, in reliance on the decision in *Roma Town Council v Dale Latemore* (2001) 167 QGIG 176-179 that . . . where an employee is dismissed for misconduct it is unnecessary for the employer to prove the misconduct on the balance of probabilities in order to escape a finding that the dismissal based upon the misconduct was “harsh, unjust or unreasonable”, and that an employer may avoid such a judgement by establishing a sufficient investigation and a *bona fide* and reasonable belief that the employee engaged in the misconduct. I must say that it seems to me to be an unwarranted extension of the line of authority which led to the expression of that view, which I do not now again rehearse, to apply it to a case in which the employer was purporting to exercise a power to dismiss exercisable only on proof of the misconduct, and to a case in which prior to the dismissal the employer had led the employee to believe that dismissal would flow only if one or other of a number of grounds were made out on the balance of probabilities. However, the short answer is that on the Commission’s finding about the investigation, which findings were open to the Commission, it is impossible to conclude that the investigation was “sufficient”.

The remaining grounds of appeal relate to observations by the Commission that Mr Walker did not intend to cause harm to the patients and that Mr Walker did not harm or injure the patients in any visible way.

Given that the Commission had already concluded, adversely to the appellant, that reliable findings could not be made about what happened on 16 June 2000 and 28 June 2000, the observations could not have been material to the Commission’s conclusion that the standard set by s. 78(1) of the *Industrial Relations Act 1999* had been met. The observations could conceivably be relevant to the issue whether reinstatement was “impractical”. However, reading the decision as a whole, I regard the observations as prefatory of certain recommendations about training with which Mr Walker should be provided upon his reinstatement. It seems to me that the Commission was concerned that persons of uncharitable disposition might treat those recommendations as suggestive of a fault on the part of Mr Walker. The observations are directed to disavowing criticisms which might otherwise be said to be implicit in the recommendations.

I dismiss the appeal.

I reserve the questions of costs.

Dated this second day November, 2001.

D.R.HALL, President.

Appearances:-

Mr C. Murdoch of Crown Law for the appellant.

Mr A.K. Herbert of Counsel directly instructed by The Australian Workers’ Union of Employees, Queensland for the respondent.

Released: 2 November 2001

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 149(1)(c) – arbitration on certified agreement

The Australian Workers’ Union of Employees, Queensland AND North Queensland Resource Recovery Pty Ltd (No. B1786 of 2000)

COMMISSIONER BECHLY

5 November 2001

DECISION

An application has been made by the Australian Workers’ Union of Employees, Queensland (AWU) and North Queensland Resource Recovery Pty Ltd (NQRR) that the Commission act pursuant to s. 149(1)(c) to determine by arbitration issues remaining in dispute between the parties concerning a certified agreement proposed between them.

Section 149(1)(c) provides that the Commission has the arbitration powers available to it when dealing with industrial disputes if, when considering the negotiation process for a certified agreement, “all the negotiating parties consider conciliation has been unsuccessful and ask the Commission to determine the matter by arbitration.”.

Each party has informed the Commission that conciliation on the remaining issues in dispute has been unsuccessful after protracted negotiations between them.

I am satisfied that further conciliation will not resolve the matters.

History

The parties contend that the work performed by employees of NQRR is award free but that provisions of the *Engineering Award – State* more closely relate to the type of work performed.

NQRR has been in operation for approximately seven years and is engaged in the recovery of used oils, greases etc., and recycling treatment and subsequent recovery of some waste products from industrial and commercial activities.

The rates of pay originally determined were in excess of those provided in the *Engineering Award – State*. That excess deteriorated over time but, because of the classification structure and associated rates the excess payment fluctuated up and down over time.

Agreement has been reached on all issues other than the rates of pay generally and an allowance for the performance of higher duties. A new classification structure has been agreed between the parties.

Whilst an allowance for dirty work was originally in contention it has now been resolved between the parties.

It is argued that the wage rates to be struck for the new agreement should contain a “measure of reclassification” in that employees “have suffered a distinct comparative disadvantage to other employees engaged in industry and generally at the relativities these people are alleged to be and have also suffered a disadvantage in terms of the type of industry such as this dealing with chemicals, disposal of certain noxious substances and so on.”.

The wage rates now proposed by the employer are considerably greater than those contained in the *Engineering Award – State*. The weekly excess ranges through \$128, \$111 and \$54 dependant upon classifications.

Following an inspection of the duties carried out by the various classifications I can only conclude that there is nothing that warrants a further increase in those rates. Provision is made in the proposed agreement to increase the rates annually based upon consumer price index adjustments.

It is a valid belief that employees have been disadvantaged by the lack of upward movement in wage rates over the period of operation of the business. In three cases employees were paid some \$4.60 below the *Engineering Award – State* for periods ranging up to twenty-two months.

This circumstance arose from September 1999 when the wage rates in place from earlier years had become degraded through State Wage Case increases.

An inspection of the work carried out was made which revealed that the skill content was at the lower range of work performed under the *Engineering Award – State*.

Essentially the work involves the receipt of waste material in drums or in bulk. Bulk waste is tipped into settling tanks and later water is drawn off for treatment and the solid residue is removed by outside contractors.

Drums are either forwarded on to other places for treatment or the contents of part filled drums are consolidated and the resultant empty drums are manually cleaned for further use.

Employees, at various stages of the classification structure, perform these duties and other duties which range from ground maintenance, operation of an automatic boiler, forklift driving and a basic quality control test on water as well as operation of a small water purification plant..

The rates of pay, when initially set several years ago, were substantially in excess of the *Engineering Award – State*. The employer has raised the absorption rights available under various State Wage Case decisions as a valid reason for non-adjustment of the rates over the last several years. Preceding those decisions, absorption rights also existed under the Safety Net Adjustments principle.

While that may be the case there remains the difficulty that, in the agreed absence of specific award coverage, rates were set which were intended to reflect the value of work performed. I do accept however, that those rates would have contained some component of notional over award payment.

The rates currently on offer from the employer substantially exceed the rates now provided in the *Engineering Award – State* at the lower end of the skill range and would appear to be at an acceptable contemporary level. It would be inappropriate to load these rates with an amount to recompense employees for past degradation of rates. Such a process would give to future employees a benefit to which they would not have any entitlement and would not recognise the differing lengths of service and thus differing levels of disadvantage suffered.

The only realistic resolution of this matter requires an arbitrary assessment of amounts to be paid to employees presently employed who commenced employment prior to September 2001 which give recognition to the above circumstances.

The arbitrary assessment of these amounts takes into account the following:–

- length of service;
- the basis upon which wage rates were originally assessed;
- the arrangements entered into between the parties at commencement of employment as to wage rates to be paid and movement through the classification structure;
- the right to absorb certain awarded increases;
- short service employees being paid less than *Engineering Award – State* comparable wage rates; and
- payment to some employees of the \$15 State Wage increase of September 2000.

Taking each of the above matters into account the following amounts should be paid by the company to the following employees:–

Ross Radloff	\$2550
Ian Nugent	\$2250
Grant Ritchie	\$1490
Ray Lee	\$1790
Wayne Anderson	\$1570
Ron Stark	\$1050
Allan Gill	\$470
Clint Gilliland	\$890
Roger Stringer	\$690

Payment of the above amounts in a lump sum may cause a taxation disadvantage in the short term. The parties should liaise as to when such payments are to be made. If a preference is expressed by employees for payment over a number of weeks it should be met by the company.

Higher Duties

The parties are unable to agree on what provision should be made for time engaged performing duties beyond the classification level at which they are engaged.

Employees seek the payment of a mixed function rate on a daily basis while the company proposes a higher duty payment where an employee is engaged on higher classification duties for a period of one week.

The parties have agreed on a hierarchal classification structure and a training process to enable employees to move up the structure.

The training program requires employees at one level to gain experience by working with employees at the next higher level until they are competent to perform all of the tasks unsupervised and at a satisfactory standard.

I understand that the philosophy adopted by the company is that there will be automatic movement through the grades when training at each level is completed, that is when the employee gains all of the skills required of the next highest position in the classification structure.

If this is the agreement between the parties there is little room for payment of a mixed function or higher duties payment during the training phase.

This philosophy would require a precise understanding of the training program, modules, etc., and a clear understanding when required standards have been achieved to enable progression to the next stage.

If the training and promotional program is as I understand it to be, then there is little purpose in having a mixed function provision. Such payments would not be available for work performed under training.

No doubt during the training process employees become skilled at some aspect of the work required of the next classification before other aspects of that classification's duties and can perform them with minimal supervision. This would not attract a mixed function payment.

A practical difficulty arises when the "trainer" is absent for some limited period and no other person is on plant to supervise the duties of the employee being trained.

There is a difficulty in providing a formal prescription as to how such a matter is to be dealt with. Consideration must be given to the stage of training reached, the length of absence of the supervisor and the responsibilities imposed by the company on the employee concerned.

The circumstances could range from there being no one on plant to supervise the work of the employee to there being another employee at a higher level or a staff member being available to supervise the work being carried out. The closeness of supervision would also have to be taken into account as well as the skills possessed.

My comments with respect to the need for a mixed function provision are made on the premise that there is an intention to provide automatic movement up the scale when each phase of training is completed.

To minimise uncertainty there is as indicated above a requirement that both parties have a clear understanding of the content of various training modules and a common understanding as to when training in each module is completed and required skill levels have been reached.

If that is not the case then further attention will need to be given to the matter, firstly by the parties in the light of the above comments and if necessary with the Commission to attempt to resolve differences.

In any event the parties should address the issues raised above as to the process to be followed if the "training supervisor" is absent.

If fully trained employees are not automatically transferred up to the next classification level then the type of mixed function provision as proposed by the employees would be more appropriate than one requiring an employee to carry out the work for several days before an entitlement to a higher rate arises. That type of requirement usually relates to a long cycle time in duties to be performed and exercise of required skills. This does not appear to be the case on work inspected by me.

The parties should discuss the above issues to finalise an understanding between them and report back to the Commission on outcome.

R.E. BECHLY, Commissioner.

Appearances:-

Mr B. Swan, with him Messrs R Stockham and Mr R. Gill for The Australian Workers' Union of Employees Queensland.

Mr J. Baulch (instructed by Ms J. Tudberry of Hopgood and Ganim) for North Queensland Resources Recovery Pty Ltd.

Released: 5 November 2001

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 – s. 74 – application for reinstatement***Kevin William Campbell AND Tarong Energy Corporation Limited (No. B1121 of 2001)**

COMMISSIONER BROWN

5 November 2001

DECISION

This is an application for reinstatement pursuant to s. 74(1) of the *Industrial Relations Act 1999* (the Act). It is some six and one-half months out of time. The applicant now seeks the favourable exercise of discretion vested at s. 74(2)(b) to retrospectively cure the failure to lodge it in time.

The applicant was employed by Tarong Energy Corporation Limited (the respondent) from 19 June 1990 to 8 November 2000. This application was filed on 22 June 2001.

Section 74(2) states:-

- “(2) The application must be made within –
(a) 21 days after the dismissal takes effect; or
(b) a further period the commission allows on an application at any time.”.

Mr Linklater-Steele, Counsel for the applicant, presented affidavits from the applicant, Mrs Jillian Campbell, Mr Peter Kuskie and Dr Mark Philip Kluver.

At the time of the dismissal that applicant was under police investigation and had been charged in connection with the unauthorised possession of property belonging to the respondent without authorisation.

The applicant was dismissed following his failure to participate in an interview with the respondent regarding the allegations.

The applicant's evidence, unchallenged by the respondent, indicated that from a time just prior to the dismissal on 8 November 2000 until June of 2001, the applicant was in a mental state that rendered him incapable of instructing his legal representative regarding his dismissal.

Evidence from the applicant was that during this time he was unable to attend callover hearings relating to the police charges because of his mental state.

When the police charges were withdrawn and despite abating but continuing psychological problems, the applicant instructed his legal representative to file an application for reinstatement. This was filed on 22 June 2001.

Dr Kluver of the Toowoomba District Health Service in a letter dated 16 October 2001 to Roberts & Kuskie, Solicitors for the applicant stated (*inter alia*)–

“The issue of whether Mr Campbell was capable of lodging proceedings in the Industrial Relations Commission needs to be addressed. There is clear documentation in his file from a range of staff members identifying Mr Campbell was severely depressed at least between October 2000 and July 2001.”.

and

“It is my opinion that it would be quite understandable that Mr Campbell would have a limited ability to cope with stress and to organise his life and I would not be surprised with his inability to commence proceedings in the Industrial Relations Commission.”.

Mr Kuskie in his affidavit comments at points 18 and 19 as follows:–

“18. Following the dismissal of the charges in the Nanango Magistrates Court and the intention to withdraw having been communicated to us by the Police on the 19 th of June 2001, I sought instructions from the applicant. Although my observations were that the applicant was still in an extremely depressed state and has a great deal of difficulty coming to grips with the issues surrounding his dismissal and had considerable difficulty in providing instructions, the finalisation of the Police investigation had a significant positive impact on him. I subsequently obtained instructions from Mr Campbell to file an application seeking redress for the circumstances of his dismissal in this Honourable Commission and the application was filed forthwith.

19. It is submitted to this Honourable Commission that instructions were obtained from Mr Campbell at the very first date that he was in a physical and mental condition to provide such instructions.”.

This evidence was unchallenged.

The evidence of the respondent given by Jeff Wells, Human Resource Manager, also unchallenged, was that on 20 September 2000, police from Nanango had informed the respondent that property (apparently the property of the respondent) had been discovered at the premises of the applicant at Nanango. Thereafter the applicant was sent home on Thursday 21 September 2000, on full pay pending investigation of the situation by the respondent. On Thursday, 21 September 2000, Wells met with the applicant in company with Mr Gary Campbell, Operations Manager and Luke Gill, Union delegate.

This meeting resulted in the applicant being given a final warning and allowed to resume work.

Wells stated that further Police advice was received by the respondent regarding property discovered at the applicant's Agnes Waters property again apparently belonging to the respondent. The applicant offered a range of possible explanations via the telephone to Wells.

Attempts to arrange a further interview on Thursday, 28 September 2000 with the applicant failed because of advice given to the applicant by Mr Kuskie, his legal representative.

Wells advised Kuskie (for the applicant), that the applicant could not resume work until an investigation had been conducted.

On 29 September 2000, Kuskie advised Wells that the applicant was not of "sufficiently sound mind to participate in an interview".

Police advised Wells that the property at the Agnes Waters premises had been inspected and that "a number" of items were identified as having originated from the respondent.

Further attempts to arrange an interview with the applicant failed and Wells was left with the task of making a decision on the applicant's employment based on the information available to him at the time. This situation was conveyed to Kuskie.

Wells stated at paragraph 24 of his affidavit the following:-

"24. On 8 November, 2000, on the basis of the information before us, we dismissed Mr Campbell. I did not believe that a warning was appropriate on this occasion. Mr Campbell had possession of a large quantity of TEC property without authority, Mr Campbell had provided me with no explanation for having the property in his possession and Mr Campbell had previously been issued with a final warning in relation to the unauthorised possession of the TEC property seized by Police from Mr Campbell's Nanango property."

Mr Linklater-Steele submitted that relevant considerations for the Commission are -

- the length of the delay;
- the explanation of delay;
- the prejudice to the applicant if the extension of time is not granted;
- the prejudice to the respondent if the extension is not granted; and
- the relevant conduct of the respondent.

Mr Linklater-Steele referred to *Savage v. Woolworths Queensland Pty Ltd* (1999) 162 QGIG 353 and also the decision in *Rich v. Chubb Protective Services* (2001) 167 QGIG 159.

Mr Linklater-Steele contended that the unchallenged medical evidence comprehensively explained the delay. In essence, the applicant was incapacitated by his condition such that he was unable to provide instructions in order to bring an application.

Mr Linklater-Steele stated that the applicant would be prejudiced by loss of the right to seek to return to a position he has held for over 10 years. The applicant is 47 years of age, in a precarious financial position and resident in a small community.

Mr Linklater-Steele believed there would be no prejudice to the respondent.

Regarding the conduct of the respondent, Mr Linklater-Steele made the following points -

- the respondent was fully apprised of the applicant's medical condition;
- it would be unjust if the respondent was able to rely on a state of affairs to which it contributed, to prevent further hearing the matter;
- the respondent knew the applicant would challenge an unfair dismissal and could not presume the matters were finalised; and
- the respondent formed an erroneous and unreasonable view of the applicant's medical condition thereby punishing the applicant for not attending an interview.

With respect to the merits of the applicant's case for reinstatement, Mr Linklater-Steele stated:-

- the Commission should have the ability to hear and determine the application on the evidence lead and the arguments adduced and ought not consider a defacto application under s. 331; and
- the issue of consideration of merit is that outlined in *Savage v. Woolworths Queensland Pty Ltd* and there is nothing fundamentally wrong with the case that would predetermine the issues and thereby depriving a full hearing.

Mr Linklater-Steele submitted that the respondent failed to properly investigate the matter and cited *Cullen v. Gold Coast Nursing Home* (1998) 159 QGIG 128 and *Christie v. Austotel Management Pty Ltd* (1998) 159 QGIG 108 in support of the application for extension of time.

Mr Herbert, Counsel for the respondent, did not take issue with the medical evidence offered as the reason for the delay.

Mr Herbert accepted that "throughout the whole of the period from about late September 2000 until July 2001, the applicant was suffering from a psychiatric illness and a depressive illness such that he was incapable of doing anything much and particularly incapable of giving instructions to solicitors".

Mr Herbert argued that was not an acceptable reason for the delay and that the length of the delay was extraordinary and in the absence of information from the applicant to the respondent for six months, the respondent was entitled to presume that the matter had been concluded.

The respondent had not calculated on or provided for a re-entry to the workforce by the applicant and therefore if it were ordered, the applicant would be surplus to requirements and as such the respondent would be prejudiced if the applicant succeeded.

Mr Herbert submitted that if the case for reinstatement was hopelessly without merit then the Commission should exercise its discretion against granting the extension.

Mr Herbert contended that at least part of the reason for dismissal was the applicant's failure to attend a show cause meeting.

Mr Herbert stated that the respondent was in possession of a doctor's certificate dated 3 October 2000, indicating a 3 to 6 month incapacity of the applicant because of depression and further that the applicant had refused to be involved in an interview regarding the allegations of unauthorised possession of property. He submitted that the applicant's condition was present for some time prior to the dismissal as mentioned in paragraphs 2 and 3 of Mrs Campbell's affidavit where she indicated 19 September as the date when evidence of the applicant's deterioration commenced.

Mr Herbert contended the respondent was not involved in notifying Police and, contrary to a claim by the applicant in his application, did not cause his health problems by dismissing him.

Mr Herbert stated that if the applicant had brought his application within time it would have availed him of nothing because he could not come back to work because of his health and he could not be compensated for a job that he could not do.

With respect to s. 73(2)(a) (a temporary absence from work because of illness or injury), Mr Herbert claimed that with the benefit of hindsight this provision could not have protected the applicant in that even if the respondent had waited 3 months, the applicant would still not have been able to perform his tasks and the respondent would have been perfectly entitled to dismiss him.

Mr Herbert claimed that the matter would have eventually failed had it been commenced within time.

Mr Herbert claimed that because of the applicant's inability to return to work would have prevented reinstatement, and compensation could not have been awarded because for the six months following the dismissal, the applicant could not work in any event.

Mr Herbert cited *Falla v Runaway Bay Accounting* B1199 of 1996 in which Bloomfield C dismissed an applicant's case on the basis that reinstatement wasn't sought and that the applicant could not be compensated because she had actually earned more than she would have earned had she been working for her previous employer.

Mr Herbert submitted that the applicant could not be awarded compensation in that he was unable to work for the entire six months following his dismissal.

Mr Herbert indicated that no challenge was made to the contention that the applicant was unable or incapable of decision making or giving instructions to legal representatives.

Mr Herbert cited Chief Commissioner Hall (as he then was) in *Teresa Gamellaro v. Catholic Education Office, Townsville* (1997) 154 QGIG 86 as being "on all fours" with the circumstances in this application. The relevant parts of that decision are produced hereunder:-

"The Commission has of course always been prepared to dismiss an application for an extension of time in cases where it is clear that a substantive application cannot succeed. An example is *Marston v Ocean Sky*. The justification for the approach is that it cannot be appropriate to exercise the statutory discretion to revive a statute barred action in order that it may fail."

And further -

"Ordinarily of course the state of evidence on an application for extension of time will not permit formation of a view so adverse to the applicant as to justify dismissal of an application on this ground. This, however, is the rare case in which it seems to me it is possible to form such a view."

And further -

"The applicant's behaviour immediately prior to dismissal was extraordinary"

And further -

"Events subsequent to the dismissal confirm the opinion by Dr Cahill. Some short time after the dismissal the applicant was admitted as a voluntary patient under the Mental Health Act, remained a patient for the best part of a month. Further medical evidence, the applicant with the benefit of hindsight seems to be suffering from manic episodes derived from a bipolar disorder was unfit to work even in September 1996 which was at the point of dismissal. In those circumstances, I'm satisfied the respondent did have a valid reason relating to the operational requirements of the school which they conducted to justify termination of the applicant's employment. This is not a case in which its legitimate to argue that one of the reasons to which the respondent had regard as an attribute for which discrimination is prohibited."

Conclusions

Possible prejudice to the respondent by a decision allowing the out of time application is limited to the respondent having to defend their decision to dismiss the applicant.

That, of course, could lead to other impositions. However, in terms of prejudice, I believe the respondent to be in no better or worse position to defend themselves than they would have been had the application been lodged within the prescribed 21 days. All the relevant material, it appears, is still available and the two matters which have only become clear with the passage of time do not, in my view, prejudice the respondent. Those matters related to the state of the applicant's health and the fact that the police charges were ultimately withdrawn.

There is agreement between the parties regarding the applicant's mental health at all material times. There is further agreement that because of the applicant's health, he would have been unable to give instructions to his legal representatives during this time to lodge an application for reinstatement.

It is my view that if the applicant was unable to instruct somebody in relation to his dismissal, he would have been incapable of pursuing it himself.

On the evidence I accept that the reason for the delay is that the applicant was prevented by reasons of health from lodging within the 21 day time frame. Further, on the evidence, factors contributing to the applicant's health problems to some extent abated from June 2001 when he was advised police charges against him were withdrawn and his application for reinstatement was lodged soon after.

I find that there is a reasonable explanation for the delay and for the length of the delay.

The respondent relies on a further 2 grounds, namely, that the application if heard, stands no chance of success and that there is no remedy available to the applicant in any event via either reinstatement or compensation.

In *Christie v. Austotel Management Pty Ltd* (1998) 159 QGIG 108 Chief Commissioner Hall (as he then was) said -

"The applicant will plainly be prejudiced if the application for extension of time is rejected. He will lose his action. Just how seriously the loss of his action will prejudice him depends on one's view of the strength of his case. And the strength of an applicant's case, if reasonably assessable, is in itself always a relevant matter. There is a world of difference between exercising the statutory discretion in order that the applicant may not be deprived of a strong case and exercising it to enable the expenditure of time and money in circumstances where it is likely to be fruitless.

In this case I have been able to form a view of the applicant's prospects of success. In *Sangwin v Imogen Pty Ltd* (unreported) case no. SA 95/1161R, Industrial Relations Court of Australia, 8 March 1996, Von Doussa J said:-

'Where the dismissal is based upon the alleged misconduct of the employee, the employer will satisfy the evidentiary onus which is cast upon it if it demonstrates that insofar as was within its power, before dismissing the employee, it conducted as full and extensive investigation into all of the relevant matters surrounding the alleged misconduct as was reasonable in the circumstances; it gave the employee every reasonable opportunity and sufficient time to answer all allegations and respond thereto; and that having done those things the employer honestly and genuinely believed and had reasonable grounds for believing on the information available at that time that the employee was guilty of the misconduct alleged; and that, taking into account any mitigating circumstances either associated with the misconduct or the employee's work record, such misconduct justified dismissal. A failure to satisfactorily establish any of those matters will probably render the dismissal harsh, unjust or unreasonable.' "

From the evidence I have concluded that the dismissal related to the conduct of the applicant and that his health problems, whilst within the broad knowledge of the respondent, was not a reason for the termination.

As mentioned, Mr Herbert took the Commission to the decision in *Gemellaro*.

I do not agree that this decision is on all fours with this matter as strongly suggested by Mr Herbert. In particular, Chief Commissioner Hall stated that "the applicant's behaviour immediately prior to her dismissal was extraordinary". The behaviour of the applicant in this matter could not be so described. His refusal to attend for an interview was based on medical advice and there is no evidence to suggest that prior to the laying of charges by the police there was any "extraordinary behaviour", in fact, things were quite normal. The applicant willingly attended the first meeting, accepted his warning and then proceeded on annual leave on his own request.

Chief Commissioner Hall (as he then was) in that case stated:-

"The Commission has of course always been prepared to dismiss an application for an extension of time in cases where it is clear that a substantive application cannot succeed. An example is *Marston v Ocean Sky*. The justification for the approach is that it cannot be appropriate to exercise the statutory discretion to revive a statute barred action in order that it may fail."

And further -

"Ordinarily of course the state of evidence on an application for extension of time will not permit formation of a view so adverse to the applicant as to justify dismissal of an application on this ground. This, however, is the rare case in which it seems to me it is possible to form such a view."

I do not agree, to use Chief Commissioner Hall's words, that in this case there exists "a view so adverse to the applicant as to justify the dismissal of an (this) application on this ground".

That is not to suggest for a moment that the applicant will or won't win - it is simply a reflection of the doubt in the mind of the Commission.

Issues not canvassed or not canvassed sufficiently to allow the Commission to make a judgment with some certainty include -

- the description and value of the goods that brought about the charges;
- the level of proof required for a prosecution in the Magistrates Court as opposed to the level of proof required in the Commission;
- the reasons given or possibly able to be given by the applicant for being in possession of the goods;
- the lack of notice period afforded the applicant;
- the manner in which the applicant was advised of his summary dismissal;
- the action of the respondent in denying sick leave to the applicant and forcing the applicant onto long service leave; and
- the absence of an interview between the respondent and the applicant prior to his dismissal.

In dealing with Mr Herbert's contentions that, in the event of the applicant succeeding, no remedy would be available to the applicant for reasons cited earlier.

I am of the view that a remedy pursuant to s. 78 (reinstatement or re-employment) would be open to the Commission in the event of the application's success although had the application been lodged in time the applicant's health could have rendered reinstatement impracticable.

I am further of the view that, despite the inability of the applicant to be gainfully employed at all material times, it is still open to the Commission to consider compensation if reinstatement were to be considered impracticable.

Section 79(2)(a) limits the maximum amount that may be awarded. This amount is tempered by s. 79(3), any amounts paid to the applicant by the respondent on dismissal (in this case nil or very little).

I believe that, in the least, an argument exists that compensation under this Act may not be governed by a straight line accounting approach linking compensation payable to the amount of monetary loss (See *Blades C in Serratori v. Doyles Construction Lawyers B1666* of 2001 (currently subject to appeal).

I do not believe that I can make an informed decision that the application is totally without merit on the information before me.

I do accept that the state of the applicant's health justified both the failure to lodge the application in time and the length of the delay.

Having considered all of the evidence and submissions I am prepared to exercise the discretion of the Commission pursuant to s. 74(2)(b) and extend the time for lodgement of the application.

Order accordingly.

D. K. BROWN, Commissioner.

Appearances:-

Mr Linklater-Steele (instructed by Roberts Kuskie Solicitors for the applicant.

Mr A. Herbert (instructed by Livingstones Australia) on behalf of Tarong Energy Corporation Limited.

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 199 – s. 230(3)(b) – arbitration***Australasian Meat Industry Union of Employees (Queensland Branch)
AND Inghams Enterprises Pty Ltd (B1342 of 2001)****POULTRY PROCESSING AWARD – STATE**

COMMISSIONER BROWN

6 November 2001

DECISION

The Australasian Meat Industry Union of Employees (Queensland Branch) (the union) lodged a dispute notification (D194 of 2001) pursuant to s. 229(2) of the *Industrial Relations Act 199* (the Act) which gave rise to a conference chaired by the Commission.

The concerns of the union were that Inghams Enterprises Pty Ltd (the respondent) refused to pay medium to long term regularly engaged casual employees compensation by way of severance payments upon the closure of their Park Ridge Plant.

The differences between the union and the respondent were unable to be resolved in conference and the parties agreed that the Commission should arbitrate the matter pursuant to s. 230(3)(b) of the Act –

“(b) if the commission considers conciliation has failed and the parties are unlikely to resolve the dispute – arbitration.”

The union was required to lodge and hence have carriage of this application to be determined by the Commission.

The relief sought by the union was arbitration of dispute No. D194 of 2001 pursuant to s. 230(4)(d) as the Commission is empowered to “make another order or exercise another power that the Commission considers appropriate for the prevention or prompt settlement of the dispute” and thereby issue orders pursuant to s. 284(1) and or s. 87 of the Act.

In essence the union’s argument centred on a view that whilst the employees in question were called casual and paid as such, they were, in fact, because of their working arrangements and the Award definition, not casuals.

The union argued that the casual exclusion contained in the Termination, Change and Redundancy (TCR) provisions as outlined in the Commission’s Statement of Policy had no effect on these employees nor were they excluded for the benefits of clause 14 (Redundancy) of the *Inghams Enterprises (Park Ridge Processing) – Certified Agreement 2000* (CA 401 of 2000) (the Certified Agreement 2000) because, in truth, they were not casuals.

The respondent’s argument was that the employees concerned were genuine casuals and therefore excluded from TCR severance benefits.

The parties agreed that the primary issue to be determined was that of employment status.

Mr R. Richardson, Branch Secretary of the union and a full-time union official since 1988, in evidence stated (*inter alia*):–

- in the poultry industry, industrial agreements existed on the ratio of casuals to permanent employees;
- employees engaged on a permanent basis who are made redundant would receive benefits in accord with the TCR Policy Statement of the Commission as well as additional entitlements set out in the Certified Agreement;
- approximately 4 years ago the respondent began recruiting new employees from a labour hire agency. Such employees were engaged on a “casual” basis;
- such casuals were paid in accordance with the Award and Certified Agreements covering the Park Ridge Plant;
- all of these employees were required to comply with the following employment conditions:–
 - present for work daily unless informed the day before that they were not required;
 - work to the provisions of a published roster;
 - notify the respondent if they were sick or otherwise unable to attend for work on any day if rostered to work;
 - be subjected to the respondent’s absenteeism disciplinary procedures if they failed to attend for work on a regular basis;
 - work regular, stipulated hours every day;
 - work 38 hours per week (and at times, overtime in excess of 38 hours) on a regular basis; and
 - notify the respondent when they wished to take unpaid leave and seek approval for same.
- seniority systems are common for casuals in the poultry industry; and
- length of service for the employees in question ranged from 1 to 4 years.

Mr Richardson believed the employees were not casual employees as defined by the Award and that they worked under an enduring full-time contract of employment with the respondent.

Mr J. Crammond, Plant Manager of the respondent, gave the following evidence (*inter alia*)

- he was employed by the respondent since 1961;
- up until 9 August 2001, the respondent operated 2 primary poultry processing plants at 162 Murrarie Road, Murrarie and Beaudesert Road, Park Ridge;
- the Park Ridge plant ceased operations on 9 August 2001;
- he was involved in discussions with the union regarding the closure of the Park Ridge plant;
- he was involved in the negotiations for the Certified Agreement 2000;
- redundancy entitlements were the subject of considerable debate leading up to agreement being reached. Casuals were a feature of those discussions;
- the respondent maintained the position that casuals would not be entitled to redundancy benefits;
- casuals can be employed on a regular and consistent basis for a significant number of hours per week for a period of at least 12 months and have a reasonable expectation of continued employment as contemplated by both the *Poultry Slaughtering Award – State – Seniority – Ingham Enterprises Pty Ltd, Park Ridge – Industrial Agreement* (the Agreement) and the Certified Agreement 2000 mentioned earlier; and

- from January 2000 all new employees were instructed that the Park Ridge plant would be closing and they would remain as casuals.

The union maintained that the contract of employment conditions of the employees in question were inconsistent with the Award definition contained in clause 4(j) which states:-

“Casual Employee’ shall mean an employee who is employed for less than one week.”.

and that pursuant to s. 135 of the Act –

“Inconsistency between awards and contracts

135.(1) To the extent of any inconsistency, an award prevails over a contract of service that is –

- (a) in force when the award becomes enforceable; or
 - (b) made while the award continues in force.
- (2) The contract is to be interpreted, and takes effect, as if it were amended to the extent necessary to make the area of inconsistency conform to the award.
- (3) However, no inconsistency arises only because the contract provides for employment conditions more favourable to the employee than the award.”.

The union contended that the Award prevails over any contract of employment except where the contract is more favourable.

As a result the union contended such employees were not casuals as defined in clause 4(j) of the Award and pursuant to s. 87 of the Act the respondent should be directed to pay severance allowance.

The respondent relied on the evidence of both Richardson and Crammond that long-term casual employment was a feature in the poultry industry. Also, that the Certified Agreement 2000 gave casual employees greater benefits than Award entitlements and allowed casuals to work the same ordinary hours per week as permanent employees and so access RDO’s.

The respondent also highlighted the redundancy provisions of the Certified Agreement 2000 that do not provide casual employees at the Park Ridge plant any benefits upon its closure.

The respondent maintained the employees in question were engaged as casuals, paid as casuals, recognised by the union as casuals and regardless of the Award definition have other specific agreements that prevail over that definition in respect to such employees at the Park Ridge plant.

Conclusions

The parties in clause 9 (Rostered Days Off) of the Certified Agreement 2000 have agreed that casuals may work the same ordinary daily hours as permanent employees and for a period of up to 19 working days per month.

The Act at s. 165 states:-

“Certified agreement’s effect on awards, agreements or orders

165.(1) while a certified agreement operates, it prevails, to the extent of any inconsistency, over an award or industrial agreement or an order made under section 137.

- (2) While a project agreement operates, it operates to the exclusion of any other certified agreement or QWA.”.

There is an inconsistency between the provisions of the Certified Agreement 2000 outlined above and the restrictions of the Award definition of a “Casual Employee”.

It is my view that the Certified Agreement 2000 prevails. The employees are casuals, employed as such and working in accordance with the terms of the Certified Agreement 2000.

I am not prepared to grant the application requesting an order pursuant to s. 284(1) to the effect that any employee working 38 hours or more in any week is not a casual employee under the Award.

The ratio decidendi for this is that, in addition to the above, the Award is a common rule Award. There are a number of employers bound by the Award and no evidence of working patterns or arguments have been presented for employers or employees other than at Inghams Park Ridge. Any number of legitimate arrangements operating in establishments other than Inghams Park Ridge may be wrongly displaced by such an order.

The orders sought in respect of s. 284(1) are refused.

Regarding the application for orders pursuant to s. 87, subsection (4) which defines severance allowance as follows:-

“severance allowance or other separation benefits’ means severance allowance or other separation benefits under article 12 of the Termination of Employment Convention 1982.”.

Article 12 states:-

“A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to:-

- (a) a severance allowance or other separation benefits, the amount of which shall be based *inter alia* on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers’ contributions; or

- superannuation due (money amount);
- shortfall;
- interest owing (money amount); and
- days payment overdue.

In relation to the column that depicted the interest owing, Mr Sorensen gave evidence that the interest rate was determined in accordance with the *Superannuation Guarantee (Administration) Act 1992*, s. 31:–

“Nominal interest component

31. (1) The nominal interest component in relation to an employer for a year is the amount that would accrue by way of interest on the total of the employer’s individual superannuation guarantee shortfalls for the year if interest were calculated at the rate applicable under the regulations for the purposes of this subsection from the beginning of the year in question until the date on which superannuation guarantee charge in relation to the total would be payable under section 46.”

The applicable regulation referred in s. 31 is at 7A of the *Superannuation Guarantee (Administration) 1996 No. 148*:–

“Nominal interest component – rate applicable

7A. For the purposes of subsection 31 (1) of the Act, the rate applicable is 10% per annum.”.

Respondent

Ms Maria Pham, a director of the respondent company, appeared on her own behalf and, in doing so, chose to call no witnesses but simply replied upon submissions from the bar table.

In her submissions, she argued that business was “really tough” at the moment, and that she had previously negotiated a settlement of these matters with the applicants which would have allowed for an instalment plan of payments to be made over a specific time period.

In terms of her liability to make the payments as sought in the application, at page 97, line 32 of transcript, Ms Pham said:–

“Yes, it’s compulsory. I have no reject at all not to pay from them. It’s just the fund is short as they know. They work in the store and they know the business, how it performed and if they understand they can wait. I understand that if I pay late, you know, I even have to pay the interest, but I have no choice because is no excess fund to put into that at the moment.”.

Final Submissions

Applicant

Mr Laurie Gillespie, on behalf of the applicants, in his final submissions, stated that the applications were seeking the payment of a statutory debt that had remained unpaid, notwithstanding a continued representation and endeavours to settle the liability.

The argument relating to the issue of capacity to pay is not something that is capable of influencing the Commission in this matter.

Respondent

Ms Pham, in her final submissions, questioned the wage figures that were relied upon by the applicants in the claims.

Conclusion

In the determination of this matter, the Commission had before it a position where the respondent acknowledged that each of the applicants were, in fact, not paid their superannuation entitlements for the period of their employment.

The applicants’ cases were supported by evidence and documentation tendered before the Commission as opposed to the respondent who disagreed with the basis upon which the calculation was made, but chose not to introduce any evidence supportive of that position.

In seeking information from Ms Pham in respect of the claim that the calculation of the entitlement was incorrect, the following exchange occurred at page 101, line 40 of transcript:–

- “Commissioner: Have you got any figures to provide me with today at all?
- Pham: I’m sorry, I don’t have any – any figures – any of the wages recorded with me today.
- Commissioner: Well, that’s all right. I just asked the question because – I mean, I will make my decision today based on the information that’s been put before the Commission and whilst you might question some of the figures – and I can understand that – you’ve got nothing to provide me with, have you?
- Pham: No, I’m sorry.”.

After consideration of the evidence and the material placed before the Commission, I find that Rulebrook Pty Ltd t/as Addable has failed to pay the superannuation entitlements, as prescribed, to each of the applicants and, therefore, is required to make payment of \$2,277.98 on behalf of Ms Hind-Jordan, and \$3,102.33 on behalf of Ms Wilson.

The respondent has been provided with the relevant information relating to the name of the fund and the appropriate account numbers of each of the applicants, and payments are to be made, into those accounts, twenty-two (22) days after the release of this decision.

I order accordingly.

J.M. THOMPSON, Commissioner.

Appearances:-
Mr L. Gillespie of the Shop, Distributive and Allied Employees Association
(Queensland Branch) Union of Employees, applicant.
Ms M. Pham, for the respondent.

Released: 7 November 2001

#####

INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(1) – appeal against decision of industrial commission

Mount Isa Mines Limited AND Ian Michael Reeves (No. C77 of 2001)

PRESIDENT HALL

7 November 2001

ORDER

By consent of the parties, the Court orders that the decision in case number B747 of 2001 be stayed, pending the determination of the appeal in case number C78 of 2001.

Dated this seventh day of November, 2001.

By the Court,
[L.S.] E. EWALD,
Industrial Registrar.

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application to amend award

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND Queensland Motel Employers Association, Industrial Organization
of Employers and Others (No. B1717 of 2001)**

ACCOMMODATION INDUSTRY (OTHER THAN HOTELS) AWARD – SOUTH-EASTERN DIVISION

COMMISSIONER ASBURY

31 October 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 31 October 2001, this Commission orders that the said Award be amended as follows as from the twelfth day of November, 2001:-

1. By deleting from subclause (1) and (2) of clause 6.4 (Uniforms) the amount of “75 cents” and inserting the amount of “85 cents” in lieu thereof in both instances.
2. By deleting from subclause (1) and (2) of clause 6.4 (Uniforms) the amount of “\$2.35” and inserting the amount of “\$2.65” in lieu thereof in both instances.

Dated this thirty-first day of October, 2001.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 12 November 2001
Amendment – Uniform Allowance
Released: 5 November 2001

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application to amend award

**Federated Engine Drivers’ and Firemen’s Association of Australasia Queensland Branch, Union of Employees
AND Brisbane City Council (No. B1019 of 2001)**

BRISBANE CITY COUNCIL ENGINE DRIVERS’ AWARD

COMMISSIONER ASBURY

1 November 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 28 June, 19 July and 1 November 2001, this Commission orders that the said Award be amended as follows as from the first day of November, 2001:-

1. By deleting subclause (4) "Travelling Allowance" of clause 3.6 (Allowances) and inserting the following in lieu thereof:-

"(4) *Travelling Allowance* – In any case where employees are required to travel by their own means, in their own time to and from a worksite and such worksite is one other than the usual commencing depot or recognised centre (as indicated in Schedule 1) a travelling allowance shall be paid to such employees on the following basis:-

- (a) *Within Brisbane City Council Boundaries* – An amount of \$13.30 will be paid as a daily allowance to reimburse employees for the inconvenience of all extra time and extra cost involved in travelling to and from a worksite.
- (b) *Outside Brisbane City Council Boundaries* – In addition to the provisions contained in (a) above, employees who report to a worksite outside of Brisbane City Council boundaries shall be paid additional travelling time to and from the worksite from the Brisbane City Council boundary at the Plant Operator's Classification Level with a minimum payment of 15 minutes.
- (c) *Use of Private Vehicles* – Employees who use their own motor vehicle to travel during ordinary working hours from worksite to worksite shall be paid 73 cents per kilometre.
- (d) the travelling provisions contained in this subclause (4) shall not apply where other travelling arrangements have been agreed to between the parties and are specified in either a "local agreement" or "exchange of letters."

2. By adding a new subclause (6) "Living Away From Home Provisions" to clause 3.6 (Allowances):-

"(6) *Living Away From Home Provisions* – (a) Where employees are employed at a worksite at such a distance from the usual place of residence that they cannot reasonably return home each night the following provisions shall apply:-

- (i) Air-conditioned accommodation plus three adequate meals per day free of charge;
- (ii) An allowance for out-of-pocket expenses of \$20.00 per day;
- (iii) The use of Council telephones for the purposes of contacting relatives; and
- (iv) Council Plant Operators who are employed on a permanent basis will be given first offer of work at distant worksites provided they are both qualified and competent to perform the required duties.

(b) *Travelling Arrangements* – A vehicle will be provided by council to transport employees and equipment to and from all distant worksites. Council transport will also be provided to move employees to and between worksites and return to overnight accommodation on completion of the workday."

Dated this first day of November, 2001.

By the Commission,
[L.S.] E. EWALD
Industrial Registrar.

Operative Date: 1 November 2001
Amendment – Travelling Allowance and Living Away from Home Provisions
Released: 5 November 2001

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application to amend award

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND The Registered and Licensed Clubs Association of Queensland,
Union of Employers and Others (No. B1722 of 2001)**

CLUBS ETC. EMPLOYEES' AWARD – SOUTH EAST QUEENSLAND

COMMISSIONER ASBURY

31 October 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 31 October 2001, this Commission doth order that the said Award be amended as follows as from the twelfth day of November, 2001:-

- 1. By deleting from clause 10.1 (Uniforms) the amount of "\$5.70" and inserting the amount of "\$6.20" in lieu thereof.
- 2. By deleting from clause 10.3 (Use of Laundry) the amount of "\$2.66" and inserting the amount of "\$2.91" in lieu thereof.

Dated this thirty-first day of October, 2001.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 12 November 2001
Amendment – Uniform and Use of Laundry Allowances
Released: 5 November 2001

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application to amend award

Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers AND The Australian Workers' Union of Employees, Queensland and Others (No. B74 of 2000)

FAST FOOD INDUSTRY AWARD – STATE (EXCLUDING SOUTH-EAST QUEENSLAND)

COMMISSIONER BECHLY

1 November 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 3 March, 10 April, 14 June and 19 September 2000, this Commission orders that the said Award be amended as follows as from the fifteenth day of January, 2001:–

By deleting clause 2 (Application) and inserting the following in lieu thereof:–

“Application

- 2. This Award shall apply to all employees as defined herein, engaged in, or in connection with, fast food operations (as defined) throughout the State of Queensland excluding the South-Eastern Division, employed by Collins Restaurants Management Pty. Ltd.; Toocom Pty. Ltd. trading as Hungry Jacks Qld, and franchises thereto; Amalgamated Food & Poultry Pty. Ltd. (Inc.) W.A. trading as Red Rooster and Big Rooster and franchises thereto; Sunstate Foods Pty Ltd; Chicken World; McDonalds Australia Pty. Ltd. and the Queensland franchises thereof; Domino’s Pizza Australia Pty Ltd and franchises thereto; Eagle Boys Dial-a-Pizza Australia Pty. Ltd. and franchises thereto; and to their employers:

Provided that this Award shall not apply to employees covered by any other award or industrial agreement, nor to any establishment which has a license to sell alcohol.

This Award shall also apply to all employees as defined herein, engaged in, or in connection with, fast food operations (as defined) throughout the State of Queensland excluding the South-Eastern Division, employed by Uncle Tony’s Kebabs Pty. Ltd trading as Uncle Tony’s Kebabs and franchises thereto, and to their employers provided that employees engaged prior to 15 January 2000 shall retain the wage rates and conditions of employment prescribed in the Café, Restaurant and Catering Award – State (Excluding South-East Queensland).”.

Dated this first day of November, 2001.

By the Commission, [L.S.] E. EWALD, Industrial Registrar.

Operative Date: 15 January 2001 Amendment – Application of Award Released: 5 November 2001

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application to amend award

Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers AND Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees and Others (No. B74 of 2000)

FAST FOOD INDUSTRY AWARD – SOUTH-EASTERN DIVISION

COMMISSIONER BECHLY

1 November 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 3 March, 10 April, 14 June and 19 September 2000, this Commission orders that the said Award be amended as follows as from the fifteenth day of January, 2001:–

By deleting clause 2 (Application) and inserting the following in lieu thereof:–

“Application

- 2. This Award shall apply to all employees as defined herein, engaged in, or in connection with, fast food operations (as defined) throughout the South-Eastern Division of the State of Queensland, employed by Collins Restaurants Management Pty. Ltd.; Toocom Pty. Ltd. trading as Hungry Jacks Qld, and franchises thereto; Amalgamated Food & Poultry Pty. Ltd. (Inc.) W.A. trading as Red Rooster and Big Rooster franchises thereto; Sunstate Foods Pty Ltd; Chicken World; McDonalds Australia Pty. Ltd. and the Queensland franchises thereof; Domino’s Pizza Australia Pty Ltd and franchises thereto; Eagle Boys Dial-a-Pizza Australia Pty. Ltd. and franchises thereto; and to their employers:

Provided that this Award shall not apply to employees covered by any other award or industrial agreement, nor to any establishment which has a license to sell alcohol.

This Award shall also apply to all employees as defined herein, engaged in, or in connection with, fast food operations (as defined) throughout the South-Eastern Division of the State of Queensland, employed by Uncle Tony’s Kebabs Pty. Ltd trading as Uncle Tony’s Kebabs and franchises thereto.”.

Dated this first day of November, 2001.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 15 January 2001
Amendment – Application of Award
Released: 5 November 2001

#####

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 125 – application for amendment

**Australian Liquor, Hospitality and Miscellaneous Workers Union, Queensland Branch,
Union of Employees AND Queensland Chamber of Commerce and Industry Limited,
Industrial Organisation of Employers and Others (No. B1480 of 2001)**

**HOSPITALITY INDUSTRY – RESTAURANT, CATERING AND ALLIED ESTABLISHMENTS
AWARD – SOUTH-EASTERN DIVISION**

COMMISSIONER BECHLY

1 November 2001

AMENDMENT

THIS matter coming on for hearing before the Commission at Brisbane on 5 September 2001, this Commission orders that the said Award be amended as follows as from the fifth day of September, 2001:–

By deleting the second paragraph of clause 5.2.3 and inserting the following in lieu thereof–

“Any employee aged 18 or 19 years who is engaged to dispense and/or sell alcoholic beverages shall be paid either a minimum rate of \$318.50 per week or the appropriate junior rate, whichever is the higher, and in the case of casual and part-time employees, at the appropriate hourly rate on the weekly rate as provided in this clause.”.

Dated this first day of November, 2001.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar.

Operative Date: 5 September 2001
Amendment – Junior Rates
Released: 5 November 2001

#####

QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 – s. 482 – arrangement for conduct of elections

Agforce Queensland Industrial Union of Employers (No. Q41 of 2001)

REGISTRAR EWALD

1 November 2001

Conduct of Election – Reason for Election – Prescribed Information – Unfilled Positions – Method of Election – Electoral Commission to Conduct Election.

DECISION

On 30 October 2001, Agforce Queensland Industrial Union of Employers lodged in the Registry under section 481 of the *Industrial Relations Act 1999*, the information as prescribed in section 36 of the *Industrial Relations Regulation 2000* in relation to its request for the conduct of an election by the Electoral Commission of Queensland for the following positions which were unfilled from previous calling for nominations:–

<i>Office</i>	<i>Number of Positions</i>	<i>Method of Voting</i>
REGIONAL COUNCILS		
Regional President- Region E	1	Direct Vote of Members
Regional Vice-President/Treasurer – Region A	1	of each Region
Regional Vice-President/Treasurer – Region B	1	
Regional Council Member		Direct Vote of Members
Region A	6	of each Region
Region B	4	
Region C	1	
Region D	2	

Regions

The boundaries of the various regions have been determined by the Organisation. The Regional Councils have decided that the number of Regional Council Members is to be based on 1 person from each of the Branches within the particular Regions. The Branches for the positions for which no nominations were received in each of the Regions are as follows:–

Region A: Aramac, Daintree, Hughenden, Ilfracombe, Lower Burdekin, and Mt Isa.

Region B: Calliope, Gindie/Fernlees, Rolleston, and, Theodore.

Region C: Cecil Plains/Norwin.

Region D: Miles and Yelarbon.

Method of Election:

I am satisfied the election is to be conducted as stated above. The result of the election is to be decided as per Rule 63 of the Organisation's Rules.

Conduct of Election:

I have considered the request, the Act, and the Rules of the Organisation, and am satisfied that an election is required to be held for these positions which are offices within the meaning of the Act.

Therefore, under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election for the above named positions by the Electoral Commission of Queensland.

Dated this first day of November, 2001.

E. EWALD,
Industrial Registrar.

Released: 1 November 2001.

#####

QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 – s. 481 – arrangement for conduct of elections

Queensland Friendly Societies Pharmacies Association, Industrial Organisation of Employers. (Q27 of 2001)

REGISTRAR EWALD

1 November 2001

Conduct of Election – Prescribed Information – Reason for Election – Method of Election – Electoral Commission to Conduct Election.

FURTHER DECISION

On 8 August 2001 the Queensland Friendly Societies Pharmacies Association, Industrial Organisation of Employers lodged in the Registry under section 481 of the *Industrial Relations Act 1999* the information as prescribed in section 36(1) of the *Industrial Relations Regulation 2000* in relation to the conduct of an election by the Electoral Commission of Queensland for all positions of Office as follows:

<i>Office</i>	<i>Number of Positions</i>	<i>Method of Election</i>
President	1	Direct Vote
Secretary/Treasurer	1	
Committeeperson	3	

On 23 August 2001 I arranged with the Electoral Commission of Queensland to conduct an election and call for nominations for the above positions in accordance with the prescribed information and Rule 36(b) of the Industrial Organisations Rules. However on further examination of the Rules at Rule 46, the Office Bearers, being the President and Secretary/Treasurer are to be elected by secret ballot of the members of the Management Committee. Therefore the prescribed information and request for election should have been filed in relation to 5 positions of Committeeperson.

Nominations have been received for 3 of the 5 Committeeperson positions therefore 2 more nominations as Committeepersons are required. The nominations for the positions of President and Secretary/Treasurer cannot be accepted at this stage. The persons who nominated for these positions would have to nominate for a Committeeperson position at this stage.

Method of Election

I am satisfied that the method of election for a position of Committeeperson is by a direct vote by secret postal ballot of the members of the Organisation. The positions of President and Secretary/Treasurer will be elected by secret ballot from the 5 Committeepersons.

Conduct of Election

I am satisfied that an election for a further 2 Committeeperson positions is required to be held under the Rules of the Industrial Organisation.

Therefore, under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election by the Electoral Commission of Queensland.

Dated this first day of November, 2001.

E. EWALD,
Industrial Registrar.

Released: 1 November 2001

QUEENSLAND INDUSTRIAL REGISTRAR

*Industrial Relations Act 1999 – s. 482 – arrangement for conduct of elections***Queensland Teachers Union of Employees (No. Q40 of 2001)**

REGISTRAR EWALD

1 November 2001

Request for Conduct of Elections – Prescribed Information – Expiry of Terms of Office – Composition of Branches and Area Councils – Methods of Elections – Electoral Commission to Conduct Elections.

DECISION

On 22 October 2001 the Queensland Teachers Union of Employees lodged in the Registry under s. 481 of the *Industrial Relations Act 1999*, the information prescribed in s. 36 of the *Industrial Relations Regulation 2000*, in relation to the conduct of elections by the Electoral Commission of Queensland for the following positions of office:–

Office	Number of Positions	Method of Election	Office	Number of Positions	Method of Election
<i>TAFE Council Representative of a Branch –</i>					
Barrier Reef Institute	1				Direct vote by members of TAFE Branch
Bayside 1					
Bremer Institute	1				
Brisbane Central	1				
Brisbane Institute	1				
Bundaberg	1				
Central Queensland	1				
Cooloola-Sunshine	1				
Far North Institute	1				
Gladstone Institute	1				
Gold Coast Institute	1				
Kangaroo Point	1				
Logan Institute	1				
Mackay 1					
Maryborough/Hervey Bay	1				
Mt Gravatt	1				
North Point	1				
Southbank	1				
South Queensland Institute	1				
Yeronga Institute	1				
Office	Number of Positions	Method of Election	Office	Number of Positions	Method of Election
<i>State Council Representative of a Branch –</i>					
Balonne	1}	Direct vote by	Macgregor/Rochedale Mackay	1}	Direct vote by
Barron	1)	members of Branch	Mackay North	1)	members of Branch
Beaudesert	1)		Maleny	1)	
Beenleigh	1)		Maroochydore	1)	
Blackwater	1)		Maryborough	1)	
Border	1)		Merrimac	1)	
Brisbane Central	1)		Morayfield	1)	
Brisbane Valley	1)		Mt Coot-tha	1)	
Browns Plains	1)		Mt Gravatt	1)	
Bundaberg North	1)		Mt Morgan &	1)	
Bundaberg South	1)		Dawson Valley	1)	
Caboolture	1)		Mulgrave	1)	
Cairns	1)		Nambour	1)	
Callide &	1)		Nerang	1)	
Dawson Valleys	1)		Noosa District	1)	
Caloundra	1)		North Burnett	1)	
Camp Hill	1)		North East Brisbane	1)	
Capalaba	1)		North Kennedy	1)	
Cape & Gulf	1)		Northern Tablelands	1)	
Cassowary Coast	1)		Peak Downs	1)	
Central Highlands	1)		Pine Rivers North	1)	
Chermside	1)		Pine Rivers South	1)	
Cleveland	1)		Port Curtis	1)	
Coolum	1)		Redcliffe	1)	
Dalby	1)		Rockhampton North	1)	
Darling Downs Central	1)		Rockhampton South	1)	
Darling Downs North	1)		Ross	1)	
Darling Downs South	1)		Runcorn	1)	
Deception Bay	1)		Sherwood	1)	
East Brisbane	1)		South Brisbane	1)	
East Moreton	1)		South Burnett	1)	
Fassifern	1)		South Western	1)	
Ferny Grove	1)		Queensland	1)	
Geebung	1)		Southport	1)	
Gold Coast North	1)		Stanthorpe	1)	

Office	Number of Positions	Method of Election	Office	Number of Positions	Method of Election
<i>State Council Representative of a Branch –</i>			<i>State Council Representative of a Branch –</i>		
Gold Coast South	1)		Sunnybank	1)	
Gympie	1)		The Gap	1)	
Hervey Bay	1)		Thuringowa	1)	
Hinchinbrook	1)		Torres Strait	1)	
Inala District	1)		Townsville	1)	
Ipswich Central	1)		Warrego	1)	
Ipswich East	1)		Warwick	1)	
Ipswich West	1)		Western Downs	1)	
Keppel	1)		Whitsunday	1)	
Leichhardt	1)		Windsor	1)	
Lockyer	1)		Woodridge	1)	
Logan	1)		Wynnum	1)	
Lower Burdekin	1)			1)	

Timing of Elections

The Rules prescribe that nominations shall be called by advertisement in the “Queensland Teachers’ Journal” with the closing date of nominations no earlier than twenty-one days after the date upon which such notice first appears in the Journal. I am advised that the next Journal is to be printed on 22 November 2001. However, the Rules have no clear date for the opening of nominations for election to assist in determining the “prescribed date” as referred to in s. 36(4) of the *Industrial Relations Regulation 2000*. Accordingly, a date is not definable. Notwithstanding, I have exercised my discretion under s. 481(2) of the *Industrial Relations Act 1999* and extended the prescribed time for filing of such information to 22 October 2001.

Methods of Election

I am satisfied that the methods of election are as specified above.

Conduct of Elections

I have considered the request, the Act and Rules and I find that the elections being sought are for positions of office within the meaning of the Act and are required to be held under the Rules of the Industrial Organisation.

Therefore, under s. 482 of the *Industrial Relations Act 1999*, I am making arrangements for the elections of the abovenamed positions to be conducted by the Electoral Commission of Queensland.

Dated this first day of November, 2001.

E. EWALD,
Industrial Registrar.

Released: 1 November 2001

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QUEENSLAND INDUSTRIAL REGISTRAR

Industrial Relations Act 1999 – s. 481 – arrangement for conduct of elections

Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers (No. Q26 of 2001)

REGISTRAR EWALD

1 November 2001

Conduct of Election – Prescribed Information – Reason for Election – Method of Election – Electoral Commission to Conduct Election.

FURTHER DECISION

On 20 July 2001 the Queensland Private Childcare Centres Employers Organisation of Queensland Industrial Organisation of Employers lodged in the Registry under section 481 of the *Industrial Relations Act 1999* the information as prescribed in section 36(1) of the *Industrial Relations Regulation 2000* in relation to the conduct of an election by the Electoral Commission of Queensland for all positions of Office as follows:

Office	Number of Positions	Method of Election
President	1	Direct Vote
Vice President	1	
Secretary	1	
Treasurer	1	
Industrial Officer	1	
Committee Member	6	

On 23 July 2001 I arranged with the Electoral Commission of Queensland to conduct an election and call for nominations for the above positions in accordance with the prescribed information and Rule 37(b) of the Industrial Organisations Rules. However on further examination of the Rules at Rule 47, the Office Bearers, being the President, Vice President, Secretary, Treasurer and Industrial Officer are to be elected by secret ballot of the members of the Management Committee. Therefore the prescribed information and request for election should have been filed in relation to 11 positions of Committeeperson.

Nominations have been received for 7 of the 11 Committeeperson positions therefore 4 more nominations as Committeepersons are required. The nominations for the positions of President, Vice President, Secretary, Treasurer and Industrial Officer cannot be accepted at this stage. The persons who nominated for these positions would have to nominate for a Committeeperson position at this stage.

Method of Election

I am satisfied that the method of election for a position of Committeeperson is by a direct vote by secret postal ballot of the members of the Organisation. The positions of President, Vice President, Secretary, Treasurer and Industrial Officer will be elected by secret ballot from the 11 Committeepersons.

Conduct of Election

I am satisfied that an election for a further 4 Committeeperson positions is required to be held under the Rules of the Industrial Organisation.

Therefore, under section 482 of the *Industrial Relations Act 1999*, I am making arrangements for the conduct of the election by the Electoral Commission of Queensland.

Dated this first day of November, 2001.

E. EWALD,
Industrial Registrar.

Released: 1 November 2001

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Industrial Relations Act 1999 – s. 594

(No. U16 of 2001)

NOTICE TO MEMBERS OF

Australian Federation of Civil Engineering Contractors, Queensland Branch, Industrial Union of Employers
(An organisation registered under the Industrial Relations Act 1999 (Qld))

***NOTICE OF APPLICATION FOR INDUSTRIAL ORGANISATION
FOR EXEMPTION FROM HOLDING AN ELECTION***

NOTICE is hereby given that application has been made by Australian Federation of Civil Engineering Contractors, Queensland Branch, Industrial Union of Employers for an exemption from the requirement that the Electoral Commission of Queensland to conduct elections for the industrial organisation.

Members of Australian Federation of Civil Engineering Contractors, Queensland Branch, Industrial Union of Employers may object to the application and may obtain a copy of the application from the applicant.

All Notices of Objection to such application must be filed with the Industrial Registrar within thirty-five days from the date of publication of this Notice.

Dated this fifth day of November, 2001.

E. EWALD,
Industrial Registrar.

#####

Industrial Relations Act 1999 – s. 594

(No. U17 of 2001)

NOTICE TO MEMBERS OF

Queensland Friendly Societies Pharmacies Association, Industrial Organisation of Employers
(An organisation registered under the Industrial Relations Act 1999 (Qld))

***NOTICE OF APPLICATION FOR INDUSTRIAL ORGANISATION
FOR EXEMPTION FROM HOLDING AN ELECTION***

NOTICE is hereby given that application has been made by Queensland Friendly Societies Pharmacies Association, Industrial Organisation of Employers, Industrial Union of Employers for an exemption from the requirement that the Electoral Commission of Queensland to conduct elections for the industrial organisation.

Members of Queensland Friendly Societies Pharmacies Association, Industrial Organisation of Employers may object to the application and may obtain a copy of the application from the applicant.

All Notices of Objection to such application must be filed with the Industrial Registrar within thirty-five days from the date of publication of this Notice.

Dated this fifth day of November, 2001.

E. EWALD,
Industrial Registrar.